

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 20-1540V

(not to be published)

MARGARITA GONZALEZ-FIGUEROA,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: April 17, 2023

Special Processing Unit (SPU);
Attorney's Fees and Costs; Paralegal
Tasks at Attorney Rates

Hiram Manuel Angueira, San Juan, PR, for Petitioner.

Alexis B. Babcock, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION ON ATTORNEY'S FEES AND COSTS¹

On November 6, 2020, Margarita Gonzalez-Figueroa filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.* (the "Vaccine Act"). Petitioner alleges that she suffered a left shoulder injury related to vaccine administration ("SIRVA") resulting from an influenza vaccine received on November 9, 2017. Petition at 1. On October 3, 2022, a decision was issued awarding compensation to Petitioner based on the Respondent's proffer. ECF No. 37.

Petitioner has now filed a motion for attorney's fees and costs, dated January 3, 2023 (ECF No. 43), requesting a total award of \$21,381.90 (representing \$21,347.70 in fees and \$34.20 in costs). In accordance with General Order No. 9, Petitioner filed a signed statement indicating that she incurred no out-of-pocket expenses. ECF No. 46.

¹ Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

Respondent reacted to the motion on January 6, 2023, indicating that he is satisfied that the statutory requirements for an award of attorney's fees and costs are met in this case, but deferring resolution of the amount to be awarded at the Court's discretion. ECF No. 44. Petitioner did not file a reply thereafter.

I have reviewed the billing records submitted with Petitioner's requests and find a reduction in the amount of fees to be awarded appropriate, for the reason listed below.

ANALYSIS

The Vaccine Act permits an award of reasonable attorney's fees and costs. Section 15(e). Counsel must submit fee requests that include contemporaneous and specific billing records indicating the service performed, the number of hours expended on the service, and the name of the person performing the service. *See Savin v. Sec'y of Health & Human Servs.*, 85 Fed. Cl. 313, 316-18 (2008). Counsel should not include in their fee requests hours that are "excessive, redundant, or otherwise unnecessary." *Saxton v. Sec'y of Health & Human Servs.*, 3 F.3d 1517, 1521 (Fed. Cir. 1993) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983)). It is "well within the special master's discretion to reduce the hours to a number that, in [her] experience and judgment, [is] reasonable for the work done." *Id.* at 1522. Furthermore, the special master may reduce a fee request *sua sponte*, apart from objections raised by respondent and without providing a petitioner notice and opportunity to respond. *See Sabella v. Sec'y of Health & Human Servs.*, 86 Fed. Cl. 201, 209 (2009). A special master need not engage in a line-by-line analysis of petitioner's fee application when reducing fees. *Broekelschen v. Sec'y of Health & Human Servs.*, 102 Fed. Cl. 719, 729 (2011).

The petitioner "bears the burden of establishing the hours expended, the rates charged, and the expenses incurred." *Wasson v. Sec'y of Health & Human Servs.*, 24 Cl. Ct. 482, 484 (1991). The Petitioner "should present adequate proof [of the attorney's fees and costs sought] at the time of the submission." *Wasson*, 24 Cl. Ct. at 484 n.1. Petitioner's counsel "should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission." *Hensley*, 461 U.S. at 434.

ATTORNEY FEES

A. Hourly Rates

Petitioner requests compensation for attorney Hiram Manuel Angueira at the following rates: \$225 per hour for 2018; \$235 per hour for 2019; \$295 per hour for 2020; \$315 per hour for 2021; and \$325 per hour for 2022. ECF No. 43 at 2. Mr. Angueria has been a licensed attorney since 2012, giving him between 6 – 10 years' experience during this matter. I find the requested rates to be reasonable and award them herein. ECF No. 41-4.

B. Paralegal Tasks at Attorney Rates

I find it necessary to reduce Mr. Agueira's requested hours for time billed on paralegal tasks. Attorneys may be compensated for paralegal-level work, but at a rate that is comparable to what would be paid for a paralegal. *See, e.g. Doe/11 v. Sec'y of Health & Human Servs.*, No. XX-XXXV, 2010 WL 529425, at *9-10 (Fed. Cl. Spec. Mstr. Jan. 29, 2010) (citing *Missouri v. Jenkins*, 491 U.S. 274, 288 (1989)); *Mostovoy v. Sec'y of Health & Human Servs.*, No. 02-10V, 2016 WL 720969, at *5 (Fed. Cl. Spec. Mstr. Feb. 4, 2016); *Riggins. v. Sec'y of Health & Human Servs.*, No. 99-382V, 2009 WL 3319818, at *20-21 (Fed. Cl. Spec. Mstr. June 15, 2009); *Turpin v. Sec'y of Health & Human Servs.*, No. 99-535, 2008 WL 5747914, at *5-7 (Fed. Cl. Spec. Mstr. Dec. 23, 2008). Examples of these tasks include (but are not limited to):

- November 6, 2018 (2.0 hrs.) "Drafting of extrajudicial demand for Walgreens";
- November 6, 2020 (0.90 hrs.) "Filing of Petition – Docket 1";
- November 18, 2020 (3.0 hrs.) "Translation of Exhibits 3 and 4"; and
- March 31, 2022 (1.30 hrs.) "Preparation of Additional Medical Records for Upload";

ECF Nos 41-1 at 1, 43-3 at 2 – 3, and 43-5 at 2.

Mr. Angueira is eligible to be reimbursed for this time – but only at a paralegal rate. I therefore reduce his rate for such work to the following: \$153 for time billed in 2018; \$156 per hour for time billed in 2019; \$163 per hour for time billed in 2020; and \$177 per hour for time billed in 2022. Application of these rates reduces the fees to be awarded by **\$1,002.90**.

ATTORNEY COSTS

Petitioner requests \$34.20 in overall costs. ECF No. 43 at 2. This amount is comprised of obtaining shipping costs. I have reviewed the requested costs and find them to be reasonable and shall award them in full.

CONCLUSION

The Vaccine Act permits an award of reasonable attorney's fees and costs for successful claimants. Section 15(e). Accordingly, I hereby GRANT Petitioner's Motion for attorney's fees and costs. I award a total of **\$20,379.00** (representing \$20,344.80 in fees and \$34.20 in costs) as a lump sum in the form of a check jointly payable to Petitioner and Petitioner's counsel. In the absence of a timely-filed motion for review (see Appendix B to the Rules of the Court), the Clerk of Court shall enter judgment in accordance with this Decision.²

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

² Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing their right to seek review.